Supreme Court of the United States.

No. 125.—October Term, 1903.

Charles L. Wedding and Louis I. Ahlering, Plaintiffs in Error, vs. Romanza Jerome Meyler. } In error to the Warren Circuit Court of the State of Kentucky.

[February 23, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a writ of error to a Circuit Court of the State of Kentucky on a judgment entered there in pursuance of a mandate of the Court of Appeals of that State, (107 Ky. 310, 685.) The action was brought upon an Indiana judgment. The answer denied the jurisdiction of the Indiana court. It was not disputed that the service in that suit was on a steamboat in the Ohio River on the Indiana side. At the trial two questions were left to the jury, one whether the person purporting to act as the attorney of the defendant in the Indiana suit was authorized to represent him, and the other whether the summons in that suit was served on the Indiana or Kentucky side of the low-water mark of the Ohio River where it touches the Indiana shore. The jury found against the authority of the alleged attorney, and found that the service was on the Kentucky side of the low-water mark, and therefore, it is assumed, within the boundaries of Kentucky. Thereupon the plaintiffs in error (the original plaintiffs) moved for judgment notwithstanding the findings of the jury, and judgment was ordered. The defendant excepted and appealed. The Court of Appeals sustained the exceptions and ordered a judgment on the verdict dismissing the action. A judgment was entered, as ordered, in the court below, the above mentioned Circuit Court, and this writ of error was brought.

It is suggested that the writ of error should have been directed to the Court of Appeals. But it appears from the form of the order of that court that the record remained in the lower court where judgment was ordered to be entered, and the writ properly ran to the Court where the judgment had to be rendered. *Rothschild* v. *Knight*, 184 U. S. 334. It is suggested further, that the record does not show a Federal question. But the jurisdiction of the Indiana court was put in issue by the pleadings and it is apparent from what has been said that the decision went on a denial of that jurisdiction because of the place of service. That denial could be justified only on the ground that the compact of Virginia

and the Act of Congress of February 4, 1791, admitting Kentucky to the Union, did not confer the right of jurisdiction which the Indiana court attempted to exercise and which the State of Indiana claims. The judgment and the opinion of the Court of Appeals both disclose that the decision was against the right under the statutes referred to, and that it was on that ground only that the Indiana judgment was denied any force or effect. The question as to the right of jurisdiction sufficiently appears. *San José Land & Water Co.* v. *San José Ranch Co.*, 189 U. S. 177, 180. It is not denied that that question is one which can be taken to this Court. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 13 How. 518, 566.

We pass to the question decided by the Court of Appeals. In 1789 the State of Virginia passed a statute known as the Virginia Compact. This statute proposed the erection of the district of Kentucky into an independent State upon certain conditions. One of these was: § 11. "Seventh, that the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this Commonwealth and of the proposed state on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river." 13 Hening, St. at L. 17. (The previous cession by Virginia of its rights in the territory northwest of the Ohio had been on condition that the territory so ceded should be laid out and formed into states. Act of December 20, 1783, 11 Hening, St. at L. 326.) The Act of Congress of February 4, 1791, c. 4, 1 Stat. 189, consents and enacts that the "district of Kentucky, within the jurisdiction of the said commonwealth" of Virginia, shall be formed into a new State and admitted into the Union. As a preliminary it recites the consent of the Virginia legislature by the above act of 1789.

Under article 4, section 3, of the Constitution, a new State could not be formed in this way within the jurisdiction of Virginia, within which Kentucky was recognized as being by the words last quoted, without the consent of the legislature of Virginia as well as of Congress. The need of such consent also was recognized by the recital in the act of Congress. But as the consent given by Virginia was conditioned upon the jurisdiction of Kentucky on the Ohio River being concurrent only with the States to be formed on the other side, Congress necessarily assented to and adopted this condition when it assented to the act in which it was contained. *Green* v. *Biddle*, 8 Wheat. 1, 87. Thus, after the passage of the two acts, it stood absolutely enacted by the powers which between them had absolute sovereignty over all the territory concerned that when States should be formed on the opposite shores of the river they should have concurrent jurisdiction on the river with Kentucky. "This compact, by the sanction of

Congress, has become a law of the Union. What further legislation can be desired for judicial action?" *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 13 How, 518 566.

It hardly is necessary to be curious or technical, when dealing with law-making power, in inquiring precisely what legal conceptions shall be invoked in order to bring to pass what the legislature enacts. If the law-making power says that a matter within its competence shall be so, so it will be, so far as legal theory is concerned, without regard to the *elegantia juris*, or whether it fits that theory or not. But there is no trouble in giving the subsequently formed States the benefit of this legislation. In the case of Kentucky the "compact" which the Virginia statute has been treated by this court as creating, *Green* v. *Biddle*, 8 Wheat. 1, 16, 90, 92, may be regarded as having been in the first stage not only a law but a continuing offer to the expected new State when it should come into being, which was accepted by that State when it came into being on the terms prescribed. And so as to the new States to be formed thereafter on the other side of the river. It is true that they were strangers to the most immediate purposes of the transaction. But it must be remembered that this was legislation, and when it is enacted by the sovereign power that new States, when formed by that power, shall have a certain jurisdiction, those States as they come into existence fall within the range of the enactment and have the jurisdiction. Whether they be said to have it by way of acceptance of an offer, or on the theory of a trust for them, or on the ground that jurisdiction was attached to the land subject to the condition that States should be formed, or by simple legislative flat, is not a material question, so far as this case is concerned. With that legislation in force there was no need to refer to it or to re-enact it in the act which made Indiana a State. That the States opposite to Kentucky have the jurisdiction, whatever it is, over the Ohio River, which the Virginia compact provided for, was not disputed by the majority of the Kentucky Court of Appeals, and has been recognized by this court and elsewhere whenever the question has come up. *Henderson Bridge Co.* v. *Henderson*, 173 U. S. 592, 621; *Arnold* v. *Shields*, 5 Dana, 18, 22; *Commonwealth* v. *Garner*, 3 Gratt. 655, 661, 710, 724, 735, 744; *State* v. *Faudre*, (W. Va.) 46 S. E. Rep. 269; *Carlisle* v. *State*, 32 Ind. 55; *Sherlock* v. *Alling*, 44 Ind. 184; *S. C.*, 93 U. S. 99; *Memphis & Cincinnati Packet Co.* v. *Pikey*, Ind. 142 304, 309, 310; *Blanchard* v. *Porter*, 11 Ohio, 138, 142.

The question that remains, then, is the construction of the Virginia compact. It was suggested by one of the judges below that the words "the respective jurisdictions . . . shall be concurrent only with the States which may possess the opposite shore" did not import a future grant but only a restriction; that they excluded the United States or other States, but left the jurisdiction of the States on the two sides to be determined

by boundary, and therefore that the jurisdiction of Kentucky was exclusive up to its boundary line of low-water mark on the Indiana side. This interpretation seems to be without sufficient warrant to require discussion. A different one has been assumed hitherto and is required by an accurate reading. The several jurisdictions of two States respectively over adjoining portions of a river separated by a boundary line is no more concurrent than is a similar jurisdiction over adjoining counties or strips of land. Concurrent jurisdiction, properly so-called, on rivers is familiar to our legislation, and means the jurisdiction of two powers over one and the same place. There is no reason to give an unusual meaning to the phrase. See *Sanders* v. *St. Louis & New Orleans Anchor Line*, 97 Mo. 26, 30; *Opsahl* v. *Judd*, 30 Minn. 126, 129, 130; *J. S. Keator Lumber Co.* v. *St. Croix Boom Corp.*, 72 Wisc. 62, and the cases last cited.

The construction adopted by the majority of the Court of Appeals seems to us at least equally untenable. It was held that the words "meant only that the States should have legislative jurisdiction." But jurisdiction, whatever else or more it may mean, is *jurisdictio*, in its popular sense of authority to apply the law to the acts of men. Vicat, Vocab, *sub. v.* See *Rhode Island* v. *Massachusetts*, 12 Peters, 657, 718. What the Virginia compact most certainly conferred on the States north of the Ohio, was the right to administer the law below low-water mark on the river, and, as part of that right, the right to serve process there with effect. *State* v. *Mullen*, 35 Iowa, 199, 205, 206. What more jurisdiction, as used in the statute, may embrace, or what law or laws properly would determine the civil or criminal effect of acts done upon the river we have no occasion to decide in this case. But so far as applicable we adopt the statement of Chief Justice Robertson in *Arnold* v. *Shields*, 5 Dana, 18, 22: "Jurisdiction, unqualified, being, as it is, the sovereign authority to make, decide on, and execute laws, a concurrence of jurisdiction, therefore, must entitle Indiana to as much power—legislative, judiciary, and executive, as that possessed by Kentucky, over so much of the Ohio River as flows between them."

The conveniences and inconveniences of concurrent jurisdiction both are obvious and do not need to be stated. We have nothing to do with them when the law-making power has spoken. To avoid misunderstanding it may be well to add that the concurrent jurisdiction given is jurisdiction "on" the river, and does not extend to permanent structures attached to the river bed and within the boundary of one or the other State. Therefore, such cases as *Mississippi & Missouri Railroad* v. *Ward*, 2 Black, 485, do not apply. *State* v. *Mullen*, 35 Iowa, 199, 206, 207.

Judgment reversed.